

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SUN NONG DAN FOODS, INC., a  
California Corporation,

Plaintiff,

v.

KANGNAM1957, INC., a California  
corporation; LA PARK'S MILPITAS,  
INC., a California corporation; HAN  
PAAN, INC., a California corporation;  
JJIM, INC., a California corporation;  
DAEHO LAS VEGAS, INC., a  
California corporation; DAEHO  
HWANG, an individual; IL PARK, an  
individual; CHAN WON PARK, an  
individual; DOES 1 through 10,  
inclusive,

Defendants.

Case No. 2:23-cv-09779-WLH-RAO

**ORDER RE DEFENDANTS'  
MOTION TO DISMISS THIRD  
AMENDED COMPLAINT [69]**

Before the Court is the Motion to Dismiss Plaintiff's Third Amended Complaint (the "Motion," Docket No. 69) brought by Defendants Kangnam1957, Inc.; La Park's Milpitas, Inc.; Han Paan, Inc.; Jjim, Inc.; and Daeho Las Vegas Inc. (collectively, "Daeho"), as well as Defendants Daeho Hwang, Il Park, and Chan Won Park (collectively with Daeho, "Defendants"). No party filed a written request for oral

1 argument stating that an attorney with five years or less of experience would be arguing  
2 the matter. (See Standing Order, Docket No. 7 at 16). Pursuant to Rule 78 of the Federal  
3 Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is  
4 appropriate for decision without oral argument. Accordingly, the hearing set for  
5 November 22, 2024, is **VACATED**. For the reasons set forth below, the Court  
6 **GRANTS** in part and **DENIES** in part Defendants' Motion to Dismiss.

7 **I. BACKGROUND**

8       **A. Procedural Background**

9 Plaintiff Sun Nong Dan Foods, Inc. ("SND") alleges that Defendants stole SND's  
10 recipe for its "flagship" dish "galbi jjim" and opened a "counterfeit" restaurant offering  
11 the same dish. (Order on Defs' Mot. to Dismiss Second Amended Complaint ("Order  
12 on MTD SAC"), Docket No. 55 at 2-3). The Court previously detailed the facts of this  
13 case (*id.*) and supplements those facts only to the extent necessary to resolve the present  
14 motion.

15 Plaintiff has filed four complaints in the present action. (Docket Nos. 1, 23, 26,  
16 58). On August 29, 2024, the Court granted in part and denied in part a Motion to  
17 Dismiss Plaintiff's Second Amended Complaint. (Order on MTD SAC). On September  
18 19, 2024, SND filed a third amended complaint alleging the same seven causes of action  
19 include in its prior complaints: (1) false designation of origin, false and fraudulent  
20 representation, and federal unfair competition under 15 U.S.C. § 1125(a)(1)(A);  
21 (2) false advertising under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B); (3) trade dress  
22 infringement under 15 U.S.C. § 1125(a); (4) trade secret misappropriation under the  
23 Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836; (5) unfair competition under  
24 Cal. Bus. & Prof. Code §§ 17200 *et seq.*; (6) false advertising under California's False  
25 Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500 *et seq.*; and (7) trade secret  
26 misappropriation under California Uniform Trade Secrets Act ("CUTSA"), Cal. Civ.  
27 Code §§ 3426 *et seq.* (Third Amended Complaint ("TAC") Docket No. 58).

1       As relevant to the present motion, the TAC Complaint includes additional  
2 allegations regarding Plaintiff's false advertising claims and trade secret  
3 misappropriation claims (*see generally* TAC), claims which the Court dismissed in a  
4 prior order. (Order on MTD SAC).

5       **B. TAC Allegations re: False Advertising**

6       In the TAC, Plaintiff specifically alleges that "two job posts and the employee  
7 training in 2019 which involves the dissemination of false statements, constitute false  
8 commercial advertising." (TAC ¶ 119, 129). Plaintiff additionally alleges that employees  
9 spread false statements about Daeho and SND's affiliation. (TAC ¶ 118). Regarding  
10 statements made by Defendants and their employees, Plaintiff specifically alleges that  
11 a customer posted the following in a review on Yelp, a restaurant review website: "We  
12 asked a few questions [of employees] since this a new spot, and we learned the head  
13 Chef of Daeho was from KTown in LA." (TAC ¶ 125; Exh. L to TAC).

14       Regarding the job posts, Plaintiff alleges that in January and February of 2019,  
15 Daeho published job posts to SF Korean and go20.com. (TAC ¶ 43; Exhibit D to TAC  
16 ("Job Posts"), Docket No. 58-4). The job post published to SF Korean was titled: "[Job  
17 Opportunity] San Francisco Japan Town – A Jackpot Korean restaurant opening in  
18 February." (TAC ¶ 43; Job Posts at 2). The post stated, in full,

19       We are looking for servers and kitchen staff to join our upcoming Korean  
20 food restaurant opening in early February in San Francisco's Japantown  
21 neighborhood.

22       Former head chef of Sun Nong Dan in Los Angeles is preparing to open a  
23 new restaurant in San Francisco's Japantown.<sup>1</sup>

24       The main menu will be tang (hot pot), and we'll be serving up some of the  
25 best hot pot and other dishes you've never had in San Francisco, like BBQ,  
26 galbi jjim, and galbi tang.

27       Open 7 days a week, starting at 7am, part-time and full-time positions  
28 available.

29       If you're interested in food, want to make money, or want to learn the  
30 restaurant business, we want to hear from you.

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28       <sup>1</sup> Parties do not dispute that this sentence is a misrepresentation.

1 Energetic and enthusiastic people are welcome.

2 Contact us at 415-265-7212  
3 Email inquiry hdh1130@gmail.com

4 Please contact us~~  
5

6 Restaurant Address  
7 1620 Post street  
8 San Francisco, CA 94115

9 (Job Posts at 2.)

10 As reflected above, the post did not include the name of the restaurant, but did  
11 note the restaurant address. (*Id.*) As of September 2024, the SF Korean job post  
12 received 783,915 views. (TAC ¶¶ 46-47, 120-21; Exhibit D2 to TAC (“Job Posting  
13 Views”), Docket No. 58-5). Plaintiff alleges that SF Korean is the “most well-known  
14 media platform within the Korean community in the San Francisco Bay Area.” (TAC  
15 ¶ 47). Plaintiff further alleges that “[f]or the Korean restaurants, recognition within the  
16 Korean Community is crucial for success.” (*Id.* ¶¶ 48, 122). Plaintiff alleges that, “like  
17 other famous Korean restaurants,” news about Daeho spread first among the Korean  
community and then to other ethnic groups. (*Id.*; *Id.* ¶ 49, 123)

18 **C. TAC Allegations re: Trade Secret Misappropriation**

19 As in past complaints, Plaintiff alleges that Defendant C. Park sought  
20 employment at SND with the intent of stealing trade secrets which he then  
21 misappropriated with other Defendants. (TAC ¶ 38). Plaintiff’s TAC includes  
22 additional allegations regarding trade secret misappropriation beyond those included  
23 in previous complaints. Plaintiff specifically alleges:

24 • “During his employment at Sun Nong Dan, Mr. C. Park worked at the Rowland  
25 Heights, San Gabriel, and Los Angeles 6th Street locations. At Sun Nong Dan  
26 Rowland Heights, he was part of the iron pot cooking team and was exposed to  
27 the recipes for soups used in galbi jjim. At the San Gabriel location, he worked  
28

1 on the galbi jjim cooking team and was exposed to the recipes for galbi jjim. At  
2 the Los Angeles 6th Street location, he was part of the kimchi sauce cooking  
3 team and was exposed to the recipes for various kimchi sauces. Throughout his  
4 time working at these different locations, Mr. C. Park gained knowledge of Sun  
5 Nong Dan's confidential recipes and business operations." (*Id.* ¶ 34).

- 6 • "Deaho [sic] Kalbijjim's galbi jjim and three side dishes have identical or  
7 nearly identical tastes and flavors to those of Sun Nong Dan, as noted by  
8 numerous Yelp reviewers. [Excerpts from Yelp Reviews noting the similarities  
9 between Daeho and SND's galbi jjim]." (*Id.* ¶ 75).
- 10 • "Furthermore, Daeho misappropriated Sun Nong Dan's confidential galbi  
11 preparation method, which has the benefit of the meat easily falling off the  
12 bone, as noted by the Yelp review [describing similarity in texture]. The shape  
13 of galbi and the same or similar taste of the galbi jjim further support the claim  
14 that Daeho misappropriated Sun Nong Dan's confidential galbi preparation  
15 method." (*Id.* ¶ 76).
- 16 • "In addition, Daeho misappropriated Sun Nong Dan's confidential culinary  
17 processes and business operations designed to efficiently handle a large volume  
18 of orders for galbi jjim, including order-taking, cooking, the use of specialized  
19 cooking equipment, and serving methods tailored for quick handling of large-  
20 scale orders which preserving the deep flavors of galbi jjim. Specifically, Daeho  
21 misappropriated galbi jjim cooking method, the use of specialized cooking  
22 equipment and order-taking method . . ." (*Id.* ¶ 77).

23 SND's complaint includes additional allegations that Daeho stole and  
24 misappropriated SND's order-taking method. (*Id.* ¶ 78).

25 **D. The Present Motions**

26 In response to Plaintiff's TAC, Defendants filed the present Motion to Dismiss.  
27 (Docket No. 69). Defendants specifically move to dismiss Plaintiff's state and federal  
28 false advertising claims (Counts II and VI) and Plaintiff's state and federal trade secret

1 claims (Count IV and Count VII). Defendants did not move to dismiss Counts I, III and  
2 V of the Complaint. In support of Plaintiff's Opposition to Defendants' Motion to  
3 Dismiss, Plaintiff submits a Declaration from SND's CEO, Gyeongryeol Lee. (Lee  
4 Decl., Docket 43-1). Defendants object to the document and move to strike it.  
5 (Objection and Motion to Strike, Docket No. 45 at 1).

6 **II. MOTION TO STRIKE**

7 In support of Plaintiff's opposition brief, Plaintiff submits a Declaration from  
8 SND's CEO, Gyeongryeol Lee. (Lee Decl., Docket 43-1). The Declaration includes  
9 screenshots of publicly accessible websites as exhibits, links to Yelp reviews and  
10 additional information on SND's alleged trade secrets. (*See generally Id.*).  
11 Defendants object to the document and move to strike it on the basis that the  
12 document presents evidence "extrinsic to the TAC." (Objection and Motion to Strike  
13 at 1).

14 In deciding a Rule 12(b)(6) motion, a court "may generally consider only  
15 allegations contained in the pleadings, exhibits attached to the complaint, and matters  
16 properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th  
17 Cir. 2007). The Court, therefore, cannot consider the Lee Declaration at this stage of  
18 litigation. *Fisher v. Nissel*, No. CV 21-5839-CBM-(KSX), 2022 WL 16961479, at \*2  
19 (C.D. Cal. Aug. 15, 2022) (striking declaration in support of plaintiff's opposition to  
20 defendant's motion to dismiss); *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp.  
21 3d 1011, 1020 (C.D. Cal. 2015) ("Courts regularly decline to consider declarations  
22 and exhibits submitted in support of or opposition to a motion to dismiss, however, if  
23 they constitute evidence not referenced in the complaint or not a proper subject of  
24 judicial notice.").<sup>2</sup> Accordingly, the Court **SUSTAINS** Defendants' objections and  
25 **STRIKES** Plaintiff's Declaration.

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<sup>2</sup> The Lee Declaration is not filed as a request for judicial notice and Plaintiff makes  
28 no showing that the facts included within the declaration are appropriate for judicial  
notice under Fed. R. Evid. 201(b).

1       **III. MOTION TO DISMISS**

2           The Court **DENIES** in part and **GRANTS** in part Defendants' Motion.

3       **E. Rule 12(b)(6)**

4           Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss for  
5 failure to state a claim upon which relief can be granted. A complaint may be dismissed  
6 for failure to state a claim for one of two reasons: (1) lack of a cognizable legal theory;  
7 or (2) insufficient facts under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*,  
8 550 U.S. 544, 555 (2007); *see also Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d  
9 1097, 1104 (9th Cir. 2008).

10          In deciding a Rule 12(b)(6) motion, a court must construe the complaint in the  
11 light most favorable to the plaintiff, accept all allegations of material fact as true, and  
12 draw all reasonable inferences from well-pleaded factual allegations. *Gompper v. VISX*,  
13 *Inc.*, 298 F.3d 893, 896 (9th Cir. 2002). Plaintiffs typically need only provide sufficient  
14 factual material to “plausibly” state a claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662,  
15 678 (2009) (citing *Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible  
16 “when the plaintiff pleads factual content that allows the court to draw the reasonable  
17 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 566 U.S. at  
18 678.

19          When a plaintiff alleges claims that “sound in” or are “grounded in fraud,”  
20 however, Rule 9(b) imposes a heightened pleading standard. *Vess v. Ciba-Geigy Corp.*  
21 *USA*, 317 F.3d 1097, 1102–06 (9th Cir. 2003); *Meridian Project Sys., Inc. v. Hardin*  
22 *Constr. Co., LLC*, 404 F. Supp. 2d 1214, 1219–20 (E.D. Cal. 2005). Under Rule 9(b),  
23 plaintiffs must “state with particularity the circumstances constituting fraud,” Fed. R.  
24 Civ. P 9(b), including the “who, what, when, where, and how” of the fraudulent activity.  
25 *United States ex rel Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047,  
26 1055 (9th Cir. 2011).

27       //

28       //

1           **A.     False Advertising Under the Lanham Act and FAL (Counts II & VI)**

2           Plaintiff brings claims for false advertising under the Lanham Act and the FAL.  
3 A false advertising claim requires that alleged false statement be part of a  
4 “commercial advertisement about [defendant’s] own or another’s product.” *BHRS*  
5 *Grp., LLC v. Brio Water Tech., Inc.*, 553 F. Supp. 3d 793, 799 (C.D. Cal. 2021); *see*  
6 *also Allergan USA, Inc. v. Prescribers Choice, Inc.*, 364 F. Supp. 3d 1089, 1108 (C.D.  
7 Cal. 2019) (describing congruence between claims made under the FAL and the  
8 Lanham Act). Commercial advertising, in turn, is “(1) commercial speech, (2) by the  
9 defendant who is in commercial competition with the plaintiff, (3) for the purpose of  
10 influencing consumers to buy defendant’s goods or services, and (4) that is  
11 sufficiently disseminated to the relevant purchasing public.” *Ariix, LLC v.*  
12 *NutriSearch Corp.*, 985 F.3d 1107, 1114–15 (9th Cir. 2021) (citing *Coastal Abstract*  
13 *Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 735 (9th Cir. 1999)). For the  
14 purposes of the last prong, for dissemination to be “sufficient,” it must “be part of an  
15 organized campaign to penetrate the relevant market, which typically involves  
16 widespread dissemination within the relevant industry.” *Id.* at 1121 (citation and  
17 quotations omitted). Rule 9(b)’s heightened pleading standard applies to false  
18 advertising claims. (Order on MTD SAC at 9 (citing *Epicor Software Corp. v.*  
19 *Alternative Tech. Solutions, Inc.*, No. SACV 13-00448, 2013 WL 2382262, at \*4  
20 (C.D. Cal. May 9, 2013))).

21           In Plaintiff’s prior Second Amended Complaint, Plaintiff largely based its false  
22 advertising claims on general allegations that Defendants intentionally misrepresented  
23 to customers that Daeho and SND were affiliated. (Order on MTD SAC at 9; SAC ¶  
24 94 – 113). Plaintiff supported its allegations with social media comments made by  
25 members of the public reflecting a belief that Daeho and SND were affiliated.  
26 Plaintiff also specifically alleged that Mr. C. Park falsely represented himself as a  
27 former head chef of Sun Nong Dan through job postings. (Order on MTD SAC at 9;  
28 SAC ¶¶ 94 – 113). The Court dismissed the false advertising claims because the

1 general allegations of intentional misrepresentation failed to meet the heighted 9(b)  
2 pleading standard and because the allegations regarding job postings and social media  
3 comments “do not constitute actionable false advertising.” (Order on MTD SAC at  
4 9). Regarding the job posts, the Court found that because the posts were written in  
5 Korean and targeted the Korean working population in San Francisco, the postings  
6 were not “disseminated sufficiently to the relevant purchasing public.” (*Id.* at 9-10).

7 In its Third Amended Complaint, Plaintiff supplements false advertising  
8 allegations in two ways. First, Plaintiff alleges that “the employee training in 2019,  
9 which involves the dissemination of false statements, constitute[d] false commercial  
10 advertising.” (TAC ¶ 129). Second, Plaintiff provides additional allegations regarding  
11 the job posts, which similarly including false statements. (See TAC ¶¶ 46-49, 120-  
12 123).

13 Plaintiff alleges that the employee training in 2019, where I. Park allegedly  
14 instructed Daeho employees to make false statements about Daeho Kalbijjim’s  
15 relationship with SND, constitutes false commercial advertising. (TAC ¶ 129).  
16 Plaintiff supports this claim with an allegation that one customer wrote a Yelp review  
17 noting: “We asked a few questions [of employees] since this a new spot, and we  
18 learned the head Chef of Daeho was from KTown in LA.” (TAC ¶ 125; Exh. L to  
19 TAC). In its prior Order, the Court found that Plaintiff met the Rule 9(b) pleading  
20 standard as to the allegation that I. Park instructed employees to mislead customers  
21 (Order on MTD SAC at 8), yet still dismissed Plaintiff’s false advertising claim. (*Id.*  
22 at 9-10). The additional allegation of the Yelp review does not change the Court’s  
23 conclusion. The Yelp review does not reflect that the employee made a false  
24 statement as part of a “commercial advertisement about [defendant’s] own or  
25 another’s product.” *See BHRG Grp.*, 553 F. Supp. 3d at 799. Instead, the allegation  
26 indicates that an employee answered a customer’s questions with an undisputed fact—  
27 that the chef had worked in Koreatown in Los Angeles.  
28

1 Plaintiff additionally alleges that two job postings published by Daeho  
2 constitute false advertising, including one posted to SF Korean. (TAC Plaintiff ¶  
3 129). In an attempt to cure deficiencies the Court identified in its previous order,  
4 Plaintiff provides additional allegations regarding the job postings. (*See supra*  
5 Section II). Plaintiff specifically alleges that for Korean restaurants, “recognition  
6 within the Korean community is crucial to success,” that SF Korean is the most well-  
7 known media platform within the Korean community in the San Francisco Bay Area,  
8 and that Daeho’s job posting on SF Korean has been viewed 783,915 times as of  
9 September. (TAC ¶¶ 46-49, 120-123).

10 Job posts can be commercial speech. *Pittsburgh Press Co. v. Pittsburgh*  
11 *Comm'n on Hum. Rels.*, 413 U.S. 376, 385 (1973) (holding that a job advertisement in  
12 question is commercial speech). Daeho does not dispute that it published the job post  
13 nor that it is in commercial competition with SND. (*See generally* Mot.). Construing  
14 the Complaint in the light most favorable to the Plaintiff, Plaintiff now properly  
15 alleges the fourth element of commercial advertising—that the job post was  
16 “sufficiently disseminated to the relevant purchasing public.” (*See* TAC ¶¶ 46-49,  
17 120-123 (alleging that users of SF Korean are relevant purchasing public and noting  
18 783,915 views on that site)). Plaintiff, however, has still failed to plead the third  
19 element of commercial advertising—that Daeho published the job post with “the  
20 purpose of influencing consumers to buy defendant’s goods or services.” *Ariix*, 985  
21 F.3d at 1115.

22 Based on the allegations before the Court, the Court cannot reasonably infer  
23 that Daeho published the job post as a means of influencing consumers. The job post  
24 itself is directed at potential employees, not potential customers. The post is labeled  
25 “Job Opportunity,” opens with “we are looking for servers and kitchen staff to join  
26 our upcoming Korean food restaurant,” notes part-time and full-time positions, and  
27 encourages those interested to contact provided contact information. (Job Posts).  
28 While the post does note that the restaurant will “be serving up some of the best hot

1 pot and other dishes you've never had in San Francisco, like BBQ, galbi jjim, and  
2 galbi tang," given the context of the rest of the post, the Court cannot fairly read the  
3 post as designed to influence customers to buy Daeho's goods or services. (*Id.*)  
4 Indeed, the post does not note Daeho's name. (*Id.*) Finally, allegations regarding the  
5 reach of the job posts and customer's confusion about the relationship between Daeho  
6 and SND do not speak to *Daeho's purpose* in publishing the job post. Without factual  
7 allegations that the job post was made to influence customers, Plaintiff's false  
8 advertising claims are analogous to claims that courts have dismissed because the  
9 false statements were not made to influence purchasing decisions. *Allergan, Inc. v.*  
10 *Merz Pharms., LLC*, No. SACV 11-446 AG (EX), 2011 WL 13323246, at \*2 (C.D.  
11 Cal. Nov. 14, 2011) (dismissing claims based on false statements made to investors);  
12 *Alfasigma USA, Inc. v. First Databank, Inc.*, 525 F. Supp. 3d 1088, 1096 (N.D. Cal.  
13 2021) (dismissing claims based on false statements in a user database).

14 This is Plaintiff's fourth attempt at filing a complaint. Therefore, and for the  
15 foregoing reasons, Plaintiff's Motion is **GRANTED** as to the false advertising claims  
16 as set forth in Counts II and VI are dismissed with prejudice, without leave to amend.

17       **B. Trade Secret Misappropriation Under DTSA & CUTSA (Counts IV**  
18       **& VII)**

19 SND claims trade secret misappropriation under the DTSA and the CUTSA.  
20 Under both statutes, "a plaintiff must allege that: (1) the plaintiff owned a trade secret;  
21 (2) the defendant misappropriated the trade secret; and (3) the defendant's actions  
22 damaged the plaintiff." *Alta Devices, Inc. v. LG Elecs., Inc.*, 343 F. Supp. 3d 868, 877  
23 (N.D. Cal. 2018) (citation and quotation omitted).

24 In a prior order, the Court found that SND adequately pled that its recipes were  
25 trade secrets. (Order on MTD SAC at 13). By contrast, the Court found that because  
26 Plaintiff made only conclusory allegations that C. Park "obtained and stole Sun Nong  
27 Dan's various confidential proprietary recipes and business practices" without factual  
28

1 allegations, Plaintiff failed to adequately allege misappropriation of those trade  
2 secrets. (*Id.* at 14).

3 Construing the TAC in the light most favorable to Plaintiff, Plaintiff has alleged  
4 sufficient facts to state a claim that Defendants misappropriated SND galbi jjim recipe  
5 and cooking method. Plaintiff has provided factual allegations regarding C. Park’s  
6 exposure to the relevant recipes and cooking methods. (TAC ¶ 34). Plaintiff has  
7 further alleged specific facts regarding the similarity of the galbi jjim dishes offered  
8 by SND and Daeho, respectively. (*Id.* ¶¶ 75-76). Finally, Plaintiff has alleged that C.  
9 Park misrepresented to SND his reason for leaving the restaurant. (*Id.* ¶ 34) (“In  
10 2018, after working for less than a year, Mr. C. Park left Sun Nong Dan, expressing an  
11 interest in starting a Chinese restaurant venture.”) These factual allegations amount to  
12 more than “mere allegations that [defendant] left Plaintiffs’ employ for a competitor  
13 who also sells [similar] products,” *MACOM Tech. Sols. Inc. v. Litrinium, Inc.*, No.  
14 SACV19220JVSJDEX, 2019 WL 4282906, at \*9 (C.D. Cal. June 3, 2019), and  
15 plausibly give rise to the inference that Plaintiff acquired and misappropriated SND’s  
16 trade secret recipe and cooking methods. *See Five Star Gourmet Foods, Inc. v. Fresh*  
17 *Express, Inc.*, Case No. 19-cv-05611-PJH (N.D. Cal. Jan. 31, 2020) (finding plaintiff  
18 adequately alleged misappropriation of a trade secret when complaint alleged how  
19 defendant gained access to secrets and specifically identified the trade secrets  
20 defendant used). For the foregoing reasons, the Court **DENIES** Defendants’ Motion  
21 to Dismiss Plaintiff’s trade secret misappropriation claims insofar as the claims rest on  
22 allegations that Defendants misappropriated recipes and cooking methods.

23 Plaintiff’s TAC includes allegations that Defendants misappropriated SND’s  
24 order-taking method, “which involves accepting pre-orders before seating customers.”  
25 (*See, e.g.*, TAC ¶ 78). Plaintiff has not and cannot allege that SND’s order-taking  
26 method is a trade secret because it cannot show that SND “attempts to keep secret” the  
27 method. *See InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 657 (9th  
28 Cir. 2020). The allegations cannot “possibly be cured by the allegation of other facts”

1 because Plaintiff cannot allege that the method by which the restaurant solicits  
2 customers' orders—which any patron is exposed to by virtue of visiting the  
3 restaurant—is a trade secret. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).  
4 As such, to the extent that Plaintiff's claims rely on allegations regarding Daeho's  
5 order-taking method, the Court GRANTS Defendants' Motion to Dismiss without  
6 leave to amend.

7 **IV. CONCLUSION**

8 Based on the foregoing discussion, Defendants' Motion to Dismiss is  
9 **GRANTED** in part and **DENIED** in part.

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11 **IT IS SO ORDERED.**

12  
13 Dated: 11/19/2024

14   
15 HON. WESLEY L. HSU  
16 UNITED STATES DISTRICT JUDGE  
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